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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~894~~ 802

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO, PLAINTIFF IN ERROR,

vs.

PETER C. DEARING.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED MARCH 12, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 804.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO, PLAINTIFF IN ERROR,

vs.

PETER C. DEARING.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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1 COURT OF APPEALS,
State of New York, ss:

Pleas in the court of appeals held at the Capitol, in the city of Albany, on the 2d day of February, in the year of our Lord one thousand eight hundred and seventy-five, before the judges of said court.

Witness the Hon. Sanford E. Church, Chief Judge, presiding.

E. O. PERRIN, *Clerk.*

Remittitur, February 17, 1875.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO, APPELLANT,
against
PETER C. DEARING, RESPONDENT.

Be it remembered that on the 29th day of December, in the year of our Lord one thousand eight hundred and seventy-four, The Farmers' and Mechanics' National Bank of Buffalo, the appellant in this action,
2 came here into the court of appeals by John B. Green, its attorney, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the superior court of Buffalo.

And Peter C. Dearing, the respondent in said action, afterwards appeared in said court of appeals by T. C. Davis, his attorney.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, this cause having been submitted on behalf of the respective parties thereto, and after due deliberation had thereon, did order and adjudge that the judgment of the general term of the superior court of Buffalo, in this action, be in all things affirmed. And it was further ordered and adjudged, that the respondent recover against the appellant costs of appeal in this court.
3 And it was also further ordered that the record aforesaid, and the proceedings in this court, be remitted to the said superior court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are, by the said court of appeals, remitted into the superior court of Buffalo before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said superior court before the justices thereof, &c.

E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

4 COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *February* 17, 1875.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] E. O. PERRIN, *Clerk.*

STATE OF NEW YORK,
Superior Court of Buffalo:

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO *against* PETER C. DEARING. } Summons.

To the above-named defendant:

You are hereby summoned and required to answer the complaint of the above-named plaintiffs, a copy of which is herewith served upon you, and to serve a copy of your answer on the subscriber at his office
5 in the city of Buffalo, N. Y., within twenty days after the service of this summons, exclusive of the day of service, or plaintiffs will take judgment against you for two thousand dollars, with interest thereon from October 5th, 1875, besides costs.

JNO. B. GREENE, *Plaintiffs' Attorney,*
Buffalo, N. Y.

Superior Court of Buffalo.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO *against* PETER C. DEARING.

The Farmers' and Mechanics' National Bank of Buffalo, being a banking association formed under and by virtue of the provisions of the act of Congress hereinafter mentioned, located and doing business of discount and deposit at the City of Buffalo, County of Erie, and State of New York, plaintiffs in this action, by John B. Green, their attorney, complains of Peter C. Dearing, the defendant, and alleges that
6 they, said plaintiffs, are a banking asseciation formed under and by virtue of the provisions of the act of Congress, entitled "An Act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," passed June 3d, 1864, and the several amendments thereto and thereafter, as will more fully and at large appear by reference to said act and amendments.

That heretofore, to wit, at the City of Buffalo, Erie county, and state aforesaid, on the 2d day of September, 1874, the said defendant made his certain promissory note in writing, bearing that date, wherein and whereby he promised to pay F. Deitman, or bearer, the sum of two thousand dollars, one month after date, at The Farmers' and Mechanics' National Bank of Buffalo, which period had elapsed before the commencement of this
7 action, and delivered the same to said F. Deitman, who, for a valuable consideration, and before the maturity thereof, delivered the same to the plaintiffs. That said note, when by its terms it became due and payable, was duly presented for payment, at the place where the same was made payable, and payment demanded and refused.

That the plaintiffs are the owners and holders of said note, and that no part thereof has been paid.

Therefore, the said plaintiffs demand judgment against the said defendant for the sum of two thousand dollars, with interest thereon, from the 5th day of October, 1874, besides costs.

JNO. B. GREENE, *Plaintiffs' Attorney.*

Superior Court of Buffalo.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO
against
PETER C. DEARING.

8 The defendant in this action, by Thad. C. Davis, his attorney, answering the complaint of the plaintiffs, herein alleges that heretofore, to wit, on the second day of September, 1874, at the City of Buffalo, in the State of New York, he applied to said plaintiffs for a loan of money, to wit, the sum of two thousand dollars, and thereupon it was then and there corruptly and usuriously, and against the statutes in such case made and provided, agreed by and between the said plaintiffs and the said defendant, that said defendant should then and there make and deliver to said plaintiffs the promissory note in said complaint mentioned, and that said plaintiffs should then and there discount the same, and upon such discount loan and advance to said defendant thereon the said sum of two thousand dollars, less interest thereon at and after the rate of ten per cent. per annum, for the time said note had to run, to
9 be reserved and taken by said plaintiffs in advance.

That thereupon, to wit, on the day and year, and at the place last aforesaid, said defendant, in pursuance of said corrupt and unlawful agreement, did make and deliver to said plaintiffs the promissory note in said complaint mentioned, and thereupon said plaintiffs did then and there, in pursuance of such agreement, discount the same, and loan and advance to said defendant thereon the sum of nineteen hundred and eighty-one dollars and sixty-seven cents and no more, and did reserve and take in advance upon such loan the sum of eighteen dollars and thirty-three cents, being at the rate of ten per cent. per annum upon two thousand dollars for the time said note to run.

Whereby and by force of the statute in such cases made and provided, the said promissory note was and is wholly void.

10 THOS. C. DAVIS,
Attorney for Defendant.

Superior Court of Buffalo.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO
against
PETER C. DEARING.

This cause having come on for trial at a special civil trial term of the superior court of Buffalo, held at the city of Buffalo on the 19th day of December, 1874, before the court, Hon. James M., one of the judges thereof, presiding, and the proofs and allegations of the parties having been heard, the court makes and files its decision.

First as matters of fact:

That the plaintiffs are a banking association formed under and by virtue of the act of Congress entitled "An act to provide a national currency by a pledge of United States bonds, and to provide for the cir-
11 culation and redemption thereof," passed June 3d, 1864, and the several amendments thereto, and at all times herein mentioned was located and doing business at the city of Buffalo, in the State of New York.

That heretofore, to wit, on the second day of September, 1874, at the city of Buffalo, in the State of New York, said defendant applied to said plaintiffs for a loan of money, to wit, the sum of $2,000, and thereupon it was then and there corruptly and usuriously, and against the statute in such case made and provided, agreed by and between the said plaintiffs and the said defendant that said defendant should then and there make and deliver to said plaintiffs his promissory note in writing, bearing that date, for the sum of $2,000, payable to F. Deitman, or bearer, one month after date, at the Farmers' and Mechanics' National Bank of Buffalo, and that said plaintiffs should then and there dis-
12 count the same, and upon such discount loan and advance to said defendant thereon the said sum of $2,000, less interest thereon, at and after the rate of ten per cent. per annum for the time said note had to run, to be reserved and taken by said plaintiffs in advance.

That thereupon, to wit, on the day and year and at the place last aforesaid, said defendant, in pursuance of said corrupt and unlawful agreement, did make and deliver to said plaintiffs his promissory note in writing, bearing that date, wherein and whereby he promised to pay F. Deitman, or bearer, the sum of $2,000 one month after date at the Farmers' and Mechanics' National Bank of Buffalo, and thereupon the plaintiffs did then and there, in pursuance of such an agreement, discount the said note and loan, and advance to said defendant thereon the
13 sum of nineteen hundred and eighty-one dollars and sixty-seven cents, and no more, and did reserve and take in advance upon such loan the sum of eighteen dollars and thirty-three cents, being at the rate of ten per cent. per annum upon two thousand dollars for the time said note had to run.

Second, as conclusion of law:

The court decides that the promissory note aforesaid is void for usury, and that the defendant is entitled to judgment, that said plaintiffs take nothing by their complaint herein, and for the costs of this action.

JAMES M. SMITH, *Judge, &c.*

December 19, 1874.

At a special civil trial term of the superior court of Buffalo, held at the law library, in the city of Buffalo, on the 19th day of December, 1874.

Present, Hon. James M. Smith, judge.

Superior Court of Buffalo.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO
against
PETER C. DEARING.

14 This cause having been tried before the court this day, and the decision of the court having been made and filed therein: Now, therefore, on motion of Mr. Thaddeus C. Davis, attorney for the defendant, it is adjudged that the plaintiffs take nothing by their complaint herein, and that said defendant receive from said plaintiffs the sum of fifty-six dollars and fifty-nine cents for his costs of this action.

Judgment signed December 21, 1874.

A. A. BLANCHARD, *Clerk.*

Bill of Exceptions.

And because none of the exceptions taken by the plaintiffs' counsel in their behalf upon the trial of the above entitled cause to the decisions of the said judge presiding in said court do not appear upon the record of the said trial as hereinbefore appears, the plaintiffs do make and file their bill of exceptions in order to review the said decisions according to the statute in such case made and provided, as follows:

The plaintiffs' counsel insisted to the court upon the said trial, and asked the court to decide, that by force of the act of Congress, entitled "An act to provide a national currency, secured by a pledge of
15 United States bonds, and to provide for the circulation and redemption thereof," passed June 3, 1864, and the several amendments thereto, under which they are organized, they are entitled to recover upon the promissory note in question the sum of two thousand dollars, less the $18.33, which was received or taken upon discounting the same, with interest on the balance, $1,981.67, from October 5, 1874.

Whereupon the court refused so to decide, and the plaintiffs' counsel did then and there except to the said decision.

The plaintiffs' counsel further insisted, and asked the court to decide, "that by the act of the legislature of the State of New York, passed in the year 1870, chap. 163, Sess. Laws of 1870, they are entitled to recover the sum of $2,000, less the $18.33 received or taken upon discounting the said promissory note, with interest on the balance, $1,981.67, from October 5th, 1874." Whereupon the court refused so to de-
16 cide, and the plaintiffs' counsel did then and there except to the said decision.

And the court decided that notwithstanding the said act of Congress, and also notwithstanding the said act of the legislature of the State of New York, that the promissory note in question was void under and by force of the usury law of the State of New York, title 3 of 2d part of Revised Statutes, section 5, for the reason that, upon discounting the same, the plaintiffs took and received the sum of $18.33 for the time it had to run under the agreement, found by the court to have been made between the parties corruptly and usuriously, and contrary to the statute aforesaid, that sum being greater than 7 per cent. per annum.

And to this decision the plaintiffs' counsel did then and there
17 except. And thereupon the court did make and file its decision in writing, as appears by the judgment roll herein, in and by which it did find and decide that said note was void for usury and that the defendant was entitled to judgment; that said plaintiffs take nothing by their complaint herein. To which decision the plaintiffs, by their counsel, duly excepted.

Wherefore the said plaintiffs do make and file this their said bill of exceptions, that the same may be added to and appear with the said record of judgment. JAMES M. SMITH.

Superior Court of Buffalo.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO
agst.
PETER G. DEARING.

18 You will please take notice that the above-named plaintiffs hereby appeal to the general term of the Superior Court of Buffalo,

from judgment entered in the above-entitled action in favor of the defendant and against the plaintiffs; that said plaintiffs take nothing by their complaint herein, and for the sum of fifty-six dollars and fifty-nine cents, in the clerk's office of the Superior Court of Buffalo, on the 21st day of December, 1874, and from each and every part thereof.

Dated Dec. 21, 1874.

JNO. B. GREENE, *Appellants' Attorney.*

To THAD. C. DAVIS, respondent's attorney, and A. A. BLANCHARD, clerk of Superior Court of Buffalo.

19 Superior Court of Buffalo.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO, appellant, *agst.* PETER C. DEARING, respondent. } Dec. General Term, 1874.

By the Court, SHELDON, J.

The court, at trial term, found that upon the discounting of the note in suit, a greater sum than at and after the rate of seven per centum per annum was taken and received by the plaintiff, under an agreement therefor, found by the court to have been made between the plaintiff and defendant.

Since the decisions of the court of appeals in the cases of the First National Bank of Whitehall vs. Lamb, 50 N. Y., 95, and the Farmers' Bank of Fayetteville vs. Hale et al., not yet reported, the con-
20 clusion of law upon these facts was inevitable, and the court properly found that the agreement was corrupt and usurious, under and by force of the usury law of the state, and was consequently void.

For the same reason the exception cannot be considered as well taken, and the general term, without further consideration of the case, in compliance with the authorities referred to, must direct the judgment appealed from to be affirmed with costs

At a general term of the Superior Court of Buffalo, held at the Law Library Rooms in the city of Buffalo, on the 26th day of December, 1874.

Present, Hon. Geo. W. Clinton, justice presiding;
" Jas. Sheldon, associate justice.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO, appellant, *agst.*
21 PETER C. DEARING, respondent.

The above-entitled action having come on in due course for a hearing, and having been heard,—

It is hereby ordered that the judgment appealed from be, and the same hereby is, affirmed in all respects.

Let judgment be entered accordingly. Dated, December 26th, 1874.

A copy: T. P. MURRAY,
Special Deputy Clerk.

Superior Court of Buffalo.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO, appellants,
against
PETER C. DEARING, respondent.

22 At a general term of the Superior Court of Buffalo, held in and for said city, at the court-house therein, on the 2d Monday of December, A. D. 1874, present,

Hon. George W. Clinton, Chief Judge.
Hon. James M. Smith, } Judges.
Hon. James Sheldon. }

The above entitled action being an appeal from a judgment rendered in said action at a special term of said court, held in and for said city, at the law library therein, on the 19th day of December, A. D. 1874, by Hon. James M. Smith, Judge, having come on in due course for argument, and having been heard, the decision of the court thereupon having been filed, whereby said judgment is in all things affirmed: Now, therefore, it is hereby adjudged that the said judgment be, and the same is hereby, in all things affirmed, and that Peter C. Dearing, the re-
23 spondent, do recover of the appellant, The Farmers' and Mechanics' National Bank of Buffalo, the sum of $62, his costs in this behalf.

Judment signed.

A. A. BLANCHARD, *Clerk.*

Dec'r 26th, 1874.

Court of Appeals.

THE FARMERS' AND MECHANICS' NATIONAL BANK OF BUFFALO, APPELLANT,
against
PETER C. DEARING, RESPONDENT.

SIRS: You will please take notice that the Farmers' and Mechanics' National Bank of Buffalo, the above-named appellant, hereby appeals to the Court of Appeals from the order of the General Term of the Superior Court of Buffalo, affirming the judgment of the special civil-trial term of
24 said court, entered in favor of the defendant and against the plaintiff in the office of the clerk of said court on the 21st day of December, 1874, dismissing the complaint in said action on the merits, and for $56.59 costs, and also from the judgment entered on said order for $62 costs in the said clerk's office on the 26th day of December, 1874.

Yours,

Dated *December 28th*, 1874. JNO. B. GREENE,
Applts. Atty.

To T. C. DAVIS, Esqr.,
Respondent's Attorney, and
A. A. BLANCHRD, Esqr.,
Clerk of the Superior Court of Buffalo.

STATE OF NEW YORK,
SUPERIOR COURT OF BUFFALO, } ss.
CLERK'S OFFICE, ERIE COUNTY.

[SEAL.]

I, Amos A. Blanchard, Clerk of the Superior Court of Buffalo, do hereby certify that I have compared the foregoing copy of the judgment roll, copy of notice of appeal, and copy of bill of exceptions with
25 the original judgment roll, notice of appeal, and bill of exceptions on file and remaining of record in this office, and that the foregoing copies, and each of them, are true and correct transcripts from, and the whole of, said several originals to which reference is herein made,

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Buffalo, this 28th day of December, 1874.

A. A. BLANCHARD, *Clerk.*

UNITED STATES OF AMERICA, ss.

The President of the United States of America to the Chief Judge and Judges of the Court of Appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition
26 of a judgment on a plea which is in the said court of appeals before you, between the Farmers' and Mechanics' National Bank of Buffalo, plaintiff and appellant, and Peter C. Dearing, defendant and respondent, a manifest error hath happened to the said The Farmers' and Mechanics' National Bank of Buffalo, as by its complaint appears.

And it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 25th day of February next,
27 in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 12th day of February, in the year of our Lord one thousand eight hundred and seventy-five, and of the independence of the United States the ninety-ninth.

[SEAL CIR. CT.] CHARLES MASON,
Clerk of the Circuit Court of the United States for the Northern District of New York.

28 (Endorsed:) United States Supreme Court. The Farmers' and Mechanics' National Bank of Buffalo, plff. in error, agst. Peter C. Dearing, deft. in error. Writ of error. Jno. B. Greene, att'y for plff. in error. The within writ allowed, Feb'y 23, 1875. Chas. Andrew, Associate Judge Court of Appeals, State of New York.

29 UNITED STATES OF AMERICA, *ss:*

To Peter C. Dearing, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the twenty-fifth day of February, 1875, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the State of New York, wherein the Farmers' and Mechanics' National Bank of Buffalo is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 23d day of February, 1875.

CHAS. ANDREW,
Associate Judge Court of Appeals, New York State.

Due service of the within citation is hereby admitted and thirty days notice under the rule is hereby waived.

30 THAD. C. DAVIS,
Attorney for Defendant in Error.

(Endorsed:) United States Supreme Court. The Farmers' and Mechanics' National Bank of Buffalo, plff. in error, agst. Peter C. Dearing, deft. in error. Citation. Jno. B. Greene, att'y for plff. in error.

The Supreme Court of the United States.

THE FARMERS' AND MECHANICS' NATIONAL BANK of Buffalo, plaintiffs in error,
agst.
PETER C. DEARING, DEFENDANT IN ERROR.

Of the 25th of February, in the year of our Lord one thousand eight hundred and seventy-five, afterwards, to wit, in this same term came the plaintiffs in error by John B. Greene, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid was given for the said defendants in error against the said plaintiffs in error in the said Court of Appeals in and for the people of the State

31 of New York, and the said plaintiffs in error now here specify and assign as matters of error, that the said Court of Appeals did affirm the judgment of the Superior Court of Buffalo in that behalf appealed to the said court according to the rules and practice of the said State, whereas the said court should have reversed said judgment, because the said plaintiffs in error insisted that by force of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," passed June 3rd, 1864, and the several amendments thereto, under which they, said plaintiffs in error, are organized, they are entitled to recover upon the promissory note in question in said record the sum of two thousand dollars, less the eighteen dollars and thirty-three cents, which was received or taken upon discounting the same, with interest on the balance, nineteen hundred eighty-one $\frac{67}{100}$ dollars, from October 5th, 1874.

Wherefore the said plaintiffs in error pray that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of said judgment, &c.

32 JNO. B. GREENE,
Attorney for Plaintiffs in Error.

The Supreme Court of the United States.

THE FARMERS' AND MECHANICS' NATIONAL BANK of Buffalo, plaintiff in error,
agst.
PETER C. DEARING, DEFENDANT IN ERROR.

Afterwards, to wit, on the same day, the said defendant in error, Peter C. Dearing, by T. C. Davis, his attorney, comes into this court and says that there is no error, either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays that the said Supreme Court now here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

THAD. C. DAVIS,
Attorney for Defendant in Error.

(Endorsed:) U. S. Supreme Court. The Farmers' and Mechanics' National Bank of Buffalo, plff. in error, agst. Peter C. Dearing.
33 Writ of error, return, citation, assignment, and joinder in error.

Supreme Court of the United States.

THE FARMERS' AND MECHANICS' NATIONAL BANK of Buffalo, plaintiffs in error,
vs.
PETER C. DEARING, DEFENDANT IN ERROR.

It is hereby stipulated that this cause may be put on the calender and docketed for hearing at the present term of this court, and we further stipulate that the same may be submitted to the court on printed briefs and arguments on any day that the court will allow it to be done, after the 10th of March inst.

Dated *March* 1, 1875.

THAD. C. DAVIS,
Att'y for Deft. in Error.
JNO. B. GREENE,
Att'y for Plff. in Error.
A. P. NICHOLS,
of Counsel for Deft. in Error.

(Endorsed:) U. S. Supreme Court. Farmers' and Mech's National Bank of Buffalo vs. Peter Dearing. Stipulation.

(Endorsement on cover:) No. 804. The Farmers' and Mechanics' National Bank of Buffalo, plaintiff in error, vs. Peter C. Dearing. New York Court of Appeals. Filed 12th March, 1875.

No. 502

United States Supreme Court.

THE FARMERS' & MECHANICS' NATIONAL BANK OF BUFFALO,
Plaintiff in Error,

AGAINST

PETER C. DEARING,
Defendant in Error.

Brief and Points of Plaintiff in Error.

This case comes before this Court on a writ of error to the Court of Appeals of the State of New York. The plaintiff is a Banking Association, organized and doing business in the city of Buffalo, under the National Bank Act, passed June 3, 1864. (Record, fol. 11.) fr 3.

This action was brought by the plaintiff on a promissory note, dated September 2, 1874, made by the defendant, for $2,000, payable one month after date, which the plaintiff discounted for defendant, charging him at the rate of ten per cent. per annum. This discount, taken in advance, was $18.33, leaving the proceeds paid to the defendant the sum of $1,981.67 at the date of the note, the excess above seven per cent. being $5.50.

The defence was usury, alleging that the agreement for the discount of the note was corrupt and illegal, and that, under the laws of New York, the whole debt was forfeited.

On the trial the plaintiff's counsel insisted that, under the 30th section of the National Bank Act, the plaintiff only forfeited the interest taken on the discount of the note, and that the plaintiff was entitled to recover the

amount actually advanced to the defendant, $1,981.67, with interest on that sum from October 5, 1874, the time the note became due.

The plaintiff's counsel also insisted on the trial, that even under the law of New York, Chapter 163, passed in 1870, the plaintiff forfeited only the interest, and not the entire debt. (Bill of Exceptions, fols. 15-16) L. 5—

Under the decision of the Court of Appeals, in the case of First National Bank of Whitehall vs. Lamb (50 N. Y. Rep., 95), the Court below held that the agreement for the discount of the note was corrupt and usurious, and that the whole debt was forfeited (fols. 19-20). The New York Court of Appeals affirmed this decision, made at the General Term of the Superior Court of the city of Buffalo, and the case is now brought into the Supreme Court of the United States for final adjudication.

There is no dispute about the facts. The case presents these questions:

"The plaintiff's counsel insisted to the Court upon the said trial, and asked the Court to decide that by force of the Act of Congress, entitled, 'An Act to provide a National Currency, secured by a pledge of United States Bonds, and to provide for the circulation and redemption thereof,' passed June 3d, 1864, and the several amendments thereto, under which they are organized, they are entitled to recover upon the promissory note in question the sum of two thousand dollars, less the $18.33, which was received or taken upon discounting the same with interest on the balance, $1,981.67, from October 5, 1874.

Whereupon the Court refused so to decide, and the plaintiff's counsel did then and there except to the said decision.

"The plaintiff's counsel further insisted, and asked the Court to decide, 'That by the Act of the Legislature of the State of New York, passed in the year 1870, Chap. 163, Sess. Laws of 1870, they are entitled to recover the sum of $2,000—less the $18.33 received and taken upon

discounting the said promissory note, with interest on the balance, $1,981.67, from October 5th, 1874.

Whereupon the Court refused so to decide, and the plaintiff's counsel did then and there except to the said decision."

OBSERVE—

1st. The defense of usury, though legal, is "unconscionable," and is not favored by the courts.

Merrill vs. Law, 9 Cow. R., 65.
Beach vs. Fulton Bank, 3 Wend. R., 573; 1 Paige, Chy. R., 429.

The excess of interest in this case was only $5.50, and the defendant goes back on his contract, refusing to pay his note for $2,000, and asks a forfeiture of the whole debt because this trifling sum was taken in excess of the legal rate. This is clearly against natural right, and inequitable.

2d. Penalties and forfeitures are not favored by the courts.

Baxter vs. Lansing, 7 Paige Chy. R., 350; 3 Sandf. Chy. R., 625–663; 17 J. R., 357.

See last clause of Judge Johnson's dissenting opinion in the case of the State Bank of Fayetteville vs. Hale, in which he says: "*Forfeitures are never "favored, and when a law is capable of two con- "structions, that which does not inflict a forfeiture "is to be preferred.*"

3d. As the people become more enlightened and commercial transactions become more extended, a strong disposition is manifested in favor of relaxing the usury laws.

In England, in 1834, the old penalties of forfeiture of the entire debt were repealed, and a provision substituted that the interest only should be forfeited.

Statutes 5 and 6, William IV.

The good effects of this legislation tended, with other causes, to the ultimate extinction of the usury laws, twenty years later, by the Act of 17 and 18 Vic., C. 90, which was passed August 5th, 1854.

Massachusetts, the most enlightened and prosperous State in the Union, repealed her usury laws March 6th, 1867.

Rhode Island and Connecticut have done the same thing; and the District of Columbia, which is under the special jurisdiction of the Federal Government, has so modified the usury laws as to forfeit only the interest.

POINT I.

These observations are preliminary to the real question in this case, which is whether a discount by the plaintiff, known and organized as a National Bank, subjects itself to the statute penalty of usury under the law of the State of New York, notwithstanding the Act of Congress passed June 3d, 1864, and notwithstanding the Act of the Legislature of the State of New York, passed in 1870.

The Superior Court of Buffalo, on the trial of this action, by reason of the decisions of this Court in the late case of the Farmers' Bank of Fayetteville vs. Hale *et al.*, and the First National Bank vs. Lamb, decided that the plaintiff is subject to the State penalty, although it had previously decided otherwise in several cases, and in the first instance March, 1870, in the case of the Third National Bank of Buffalo vs. Van Vleck & Tilden.

The counsel for the plaintiff in error does not think it becoming him to present any extended arguments of his own beyond stating the facts applicable to the case itself, and calling the attention of the Court to the cases already existing, where in other States the courts have decided that Congress has the constitutional power to establish National Banks, has the power to establish the rate at which they may discount paper, and the effect or

penalty of taking or reserving a greater rate. The counsel for the appellant presents such divers decisions, and the grounds on which the divers judges have founded them, as superceding or discountenancing any lengthy suggestions of his own.

These cases decide that the penalty in this case should only be a forfeiture of the "entire interest" taken by the Bank, $18.33, on the discount of the $2,000 note. This is the forfeiture prescribed by the 30th section of the National Bank Act, which is the charter under which the Bank acted in discounting the note in this case. The National law creating a banking system for the United States, is complete in itself. It having been decided that Congress has the constitutional power to establish this general system of National Banks, it necessarily follows that it can establish the rate at which they can discount paper, and a uniform penalty for reserving or taking a greater rate in all the States of the Union. It supercedes the State laws imposing penalties for usury, so far as applicable to National Banks, and prevents hostile legislation in any of the separate States.

McCulloch vs. Maryland, 4 Wheat., 316.
Story's Com., § 439–440; 5 Wheat., 23.

Massachusetts.—In the case of Davis, receiver of the Ocean National Bank of New York, vs. Randall, the Supreme Court of Massachusetts held that the provisions of the United States law, fixing the penalty for taking usury, supercedes the laws of New York upon this subject, so far as applicable to National Banks, *and expressly refused to be bound by the decision of the New York Court of Appeals on this question.*

115 Mass. R., 547.

Also, the Supreme Court of Massachusetts decided the same way in the case of the Central National Bank of New York vs. Pratt.

Id., 539.

Pennsylvania.—In the case of the Second National Bank of Erie vs. Brown, the Supreme Court of Pennsylvania held that when a National Bank takes usurious interest on discounts of notes, the "entire interest" only is forfeited, and that *lawful interest may be recovered in an action for the principal loaned.*

72 Penn. R., 209.

Indiana.—National Bank case decided in the same way.

Wiley vs. Starbuck, 44 Black R., 298.

Missouri.—In the case of Tiffany vs. The National State Bank of Missouri, the Court held that the National Bank Act is an "*enabling act, and not a restraining one,*" and that the taking of ten per cent. interest in that State is not usury.

18 Wallace R. 409, Park *et al.*, Trustees, etc., vs. National Bank of State of Missouri.

See Justice Miller's opinion, Banker's Magazine, Dec., 1870, p. 416.

Ohio.—Citizens' National Bank of Piqua vs. Leming, 8 Int. Rev. Record, 132, the District Court of the United States decide that "the National Bank "Act fixes the penalty for usury, but it does "not, nor can it be, so construed as to forfeit "the debt."

See also First National Bank of Columbus vs. Gurlinghouse, 22 Ohio St. R., 492, in opposition to New York Court of Appeals.

In the District of Columbia.—"An Act to amend the usury laws of the District of Columbia," which provides "that if any person or corporation in this District shall contract to receive a greater rate of interest than ten per cent. upon any con-

tract in writing, or six per cent. upon any verbal contract, such person or corporation shall *forfeit the whole of said interest* so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation." It will be observed that the *forfeiture of the interest is the only penalty prescribed by Congress nearly six years after the passage of the national currency act for corporations and individuals in the District of Columbia.* Passed April 22, 1870.

The National Bank Act has been in operation eleven years, and, upon a very full examination, I may say that the New York Court of Appeals is the first and only Court in the United States, high or low, that has decided in a case of this kind that the entire debt is forfeited. The Superior Court of the city of Buffalo, in 1870, decided the other way, and is still of the same opinion; but in deference to the decision of the Court of Appeals, considered itself bound to follow the adjudication of that Court. (See Record, fols. 19-20). The Supreme Court of the State of New York have, in numerous cases, decided that only the *interest* was forfeited under the 30th section of the National Bank Act.

Lake Ontario Nat. Bank.—Judges Mullen, Bacon and Morgan.
57 Barb. R., 429. Opinion by Judge Potter, concurred in by Bockes, James and Rosecrans.

Even in the State of New York the weight of judicial opinion in cases of this kind is, that the interest only is forfeited. In the recent case of the Bank of Fayetteville vs. Hale, the New York Court of Appeals stood four to three.

The lower courts and the Supreme Court of the State of New York having, in several cases that had come before them for adjudication, decided that, under the 30th

section of the National Bank Act, the National Banks, for taking more than seven per cent. on notes and bills si counted, in actions to recover such notes and bills, only forfeited the "entire interest" reserved and taken; and this was the general understanding of the people in all parts of the State, and that the National Banks had some advantage over the State Banks. The Legislature of the State of New York conceded that such was the proper construction of the National law, and it accordingly passed the Act, Chap. 163, April 9th, 1870, by which it intended to put the State Banks of New York on the same footing and *equality* with the National Banks, and expressly *repealed* "all acts and parts of acts inconsistent with it." This was a *practical* construction of the National Bank Law by the Legislature of New York, but the Court of Appeals in this State have since annulled this Legislative enactment and made it inoperative, by,

1st. Deciding that, if the National Banks take more than seven per cent. on discounts, the whole debt is forfeited.

2d. That the State Banks are on an *equality* with the National Banks, and consequently the State law of 1870 is inoperative as to them.

Now, under these circumstances, one or the other of these parties has committed a blunder. Either the Legislature of New York was wrong in *acquiescing* in the construction of the United States law, that the National Banks only forfeited the entire interest when they took more than seven per cent., and that the State Banks should be placed on the same footing; or that the Court of Appeals was wrong in annulling this *State Statute*, in order to uphold the *State rights* doctrine asserted in its construction of the 30th section of the National Bank Act. The State Legislature passed the Act of 1870, intending it to operate as a *law;* the Court of Appeals have annulled it and made it inoperative. Which was right?

The Legislature of New York or its Court of Appeals? Can the Court of Appeals annul a constitutional law of this kind? Was it not perfectly competent for the Legislature of New York, by a legislative enactment, to *acquiesce* in the right of the National Banks to discount notes and bills in this State, and if they reserved more than seven per cent. the interest only should be forfeited; and could they not by the same act place the State Banks on the same footing? Did not the Legislature of New York virtually do just these two things by the act in question? In this view of the case the Legislature was consistent in its action, and is not this the fair construction of the law? The other view of the question, taken by the Court of Appeals, leads to an absurdity. It undertakes to overrule Congress and the Legislature of New York on matters which each is competent to decide for itself. Believing that this law of 1870 is operative, we claim that even under this law of New York the note in suit was not void, and that the plaintiff forfeited only the entire interest, $18.33.

POINT II.

The plaintiff claims interest on the amount actually advanced to the defendant, $1,981.67, after the note became due October 5, 1874.

72 Penn. R., 209.

WM. H. GREENE, *of Counsel*,
for Plaintiff in Error.

The following is a copy of the 30th Section of the *National Bank Act:*

SEC. 30. And be it further enacted, That every Asso-

ciation may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange or other evidences of debt, interest at the rate allowed by the laws of the State or Territory where the bank is located, and no more, except that where by the laws of any State a different rate is limited for banks of issue organized under State laws, the rates so limited shall be allowed for Associations organized in any such State under this Act. And when no rate is fixed by the laws of the State or Territory, the bank may take, receive, reserve, or charge a rate not exceeding seven per centum, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. And the knowingly taking, receiving, reserving, or charging a rate of interest greater than aforesaid, shall be held and adjudged a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person or persons paying the same, or their legal representatives, may recover back, in any action of debt, twice the amount of the interest thus paid, from the Association taking or receiving the same. Provided, That such action is commenced within two years from the time the usurious transaction occurred. But the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

Amended.
See New U. S. Rev. Statute p. 1011. Sec 5-197-8

Copy of New York Statute, Chapter 163.

An Act to amend the act entitled "An Act to authorize the business of Banking, passed April eighteen, eighteen hundred and thirty-eight. Passed April 9, 1870.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Every banking association organized and doing business under and by virtue of the act entitled "An Act to authorize the business of Banking," passed April eighteen, eighteen hundred and thirty-eight, and the various acts supplementary thereto, and amendatory thereof, is hereby authorized to take, receive, reserve and charge on every loan or discount made or upon any note, bill of exchange, or other evidences of debt, interest at the rate of seven per cent. per annum, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The knowingly taking, receiving, reserving or charging a rate of interest greater than aforesaid, shall be held and adjudged a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon, and in case a greater rate of interest has been paid, the person or persons paying the same, or their legal representatives, may recover back twice the amount of the interest thus paid from the association taking or receiving the same, provided that such action is commenced within two years from the time the said excess of interest is taken. But the purchase, discount or sale of a bona fide bill of exchange, note, or other evidence of debt, payable at another place than the place of such purchase, discount or sale, at not more than the current rate of exchange for sight drafts, or a reasonable charge for collecting the same, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest than seven per cent. per annum.

§ 2. It is hereby declared that the true intent and meaning of this act is to place the banking associations organized and doing business as aforesaid *on an equality in the particulars in this act referred to, with the national banks organized under the act of Congress* entitled "An Act to

the Banks doing business under the National Bank Act.

U. S. Revised Statutes, page 1011, Sec. 5197–8.

The National Bank system was created as an aid to the Treasury Department, and many of the Banks are now acting as the Fiscal agents of the Government.

"The power of the Government to create a bank is supreme; from its nature it includes the power to endow it with all such faculties as are appropriate to accomplish its object. It is clear, as stated in Osborn vs. United States' Banks, 9 Wheat., 738, that the faculty of lending and dealing in money is an appropriate and necessary faculty for a bank, and that without it the bank would want the capacity to perform its public functions in the most efficient manner. The rate of interest to be charged for the use of money is a necessary incident of a loan, and the power in Congress to authorize a bank to lend money involves the power to fix the rate of interest and the penalty for taking a greater rate. *If a State may fix the rate of interest, it may practically destroy this faculty of the bank.* The power to create a bank includes the power to fix the limitations within which it may exercise its functions and faculties, and to determine the causes for which, and the manner in which, it may be destroyed. The power vested in Congress is inconsistent with a power in any State or Territory to affix penalties upon the bank for taking unlawful interest or for any other violation of the act of Congress. We are of opinion that it was within the constitutional power of Congress to fix the rate of interest which a National Bank might take upon a loan of money, and to determine the penalty to be imposed for taking a greater rate; *that such power, when vested in Congress, is exclusive of State legislation;* that the provision of the thirtieth section of the act of Congress we are considering, imposing a penalty for taking unlawful interest, applies as well to banks established in States where no rate is fixed, and, therefore, *that*

the laws of New York imposing penalties for taking usury do not apply to National Banks established within its limits."

115 Mass. R., 539.

E. G. SPAULDING,
Of Counsel for Plff. in Error.

United States Supreme Court.

THE FARMERS' & MECHANICS' NATIONAL BANK OF BUFFALO,
Plaintiff in Error,

AGAINST

PETER C. DEARING,
Defendant in Error.

Brief and Points of Defendant in Error.

STATEMENT OF FACTS.

This case comes here on a writ of error from a judgment of the Court of Appeals of the State of New York, affirming a judgment of the General Term of the Superior Court of the city of Buffalo.

The facts are as follows: The plaintiff is incorporated under the National Banking Act of June 3d, 1864. On the second of September, 1874, in this State, the plaintiff agreed to loan the defendant two thousand dollars, and take his note, payable one month after date therefor; it being agreed that, in consideration of such loan, the plaintiff should deduct from the amount actually paid the defendant, interest at the rate of ten per cent. per annum; and this arrangement was carried out, the plaintiff advancing one thousand nine hundred and eighty-one dollars and sixty-seven cents, and the defendant giving his note for two thousand dollars, payable one month after date

(fol. 12 *et seq.*, case). Upon the trial at Special Term, the Court held that the note in question was usurious and void, and judgment accordingly was entered for the defendant. On appeal to the General Term the judgment was affirmed.

POINT I.

The note in litigation being made upon a usurious consideration, is void in this State, unless its validity is preserved by section thirty of the Act of Congress of June 3, 1864, in respect to National Banks. This Act, however, does not make the note valid:

1st. Because it makes National Banks subject in all respects to the State laws governing interest; and,

2d. Congress has no power to pass an act annulling a State Usury law in cases like the one in hand, inasmuch as the exercise of such a power is not a necessary adjunct of the power to create banks, and it is not given specifically by the Constitution. No privilege of immunity from the usury laws of the State is conferred upon the National Banks by the Act of Congress of 1864 (13 Stat. at Large, 99), and a contract for a loan made in this State with one of these organizations, by which it reserves a greater rate of interest than seven per cent., is void.

First National Bank of Whitehall vs. Lamb, 50 N. Y. R., 95.

The provision of section thirty of said Act, limiting the forfeiture to the interest, has reference only to the preceding sentence, which prescribes a rate of interest in those States and Territories where no rate is fixed by law. A construction of this provision which would make it ap-

plicable to contracts made in States where the rate of interest is regulated, and which would bring it in conflict with the State laws, would render it unconstitutional.

The power to create a corporation, as an appropriate instrument for the execution of a constitutional power vested in the Federal Government, only carries with it authority to confer upon that corporation such privileges or immunities from State laws as are necessary to enable it to effect the legitimate national object for which it is created. No such national object requires that National Banks should exceed the rates of interest fixed by the States, and no immunity from State usury laws is therefore necessary.

5 Wal., 462, 470.
9 Wal., 353, 363.
9 Wheat., 861.

POINT II.

The judgment should be affirmed with costs.

THAD. C. DAVIS,
Attorney for Deft. in Error.

A. P. NICHOLS, *of Counsel.*